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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------|
| 10/781,432 | 02/18/2004 | Teresa Marie Zander | 18874 | 3485 |
| 23556 | 7590 | 12/16/2005 | | |
| KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956 | | | EXAMINER HILL, LAURA C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NO./ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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10/781,432

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| ART UNIT | PAPER |
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20051207

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary

Application No.

10/781,432

Applicant(s)

ZANDER ET AL.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/11/05
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claim Language Interpretation

1. The term 'diverge' is given its broadest reasonable interpretation of the plain meaning of 'to move or extend from a common point' (see Oxford and Merriam-Webster online dictionaries). Therefore, it is important to note that the first and second arrays diverging toward a longitudinal end region as recited in claim 1 are only limited to having some component moving toward each first and second longitudinal end region.
2. The phrase 'differently arranged' as recited in claim 1 could include but is not limited to each array having the same pattern as each other, each array being placed in a different spatial location with respect to one another or spaced apart from one another since the term 'arrange' simply means 'to put in a particular order' (Oxford online dictionary).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

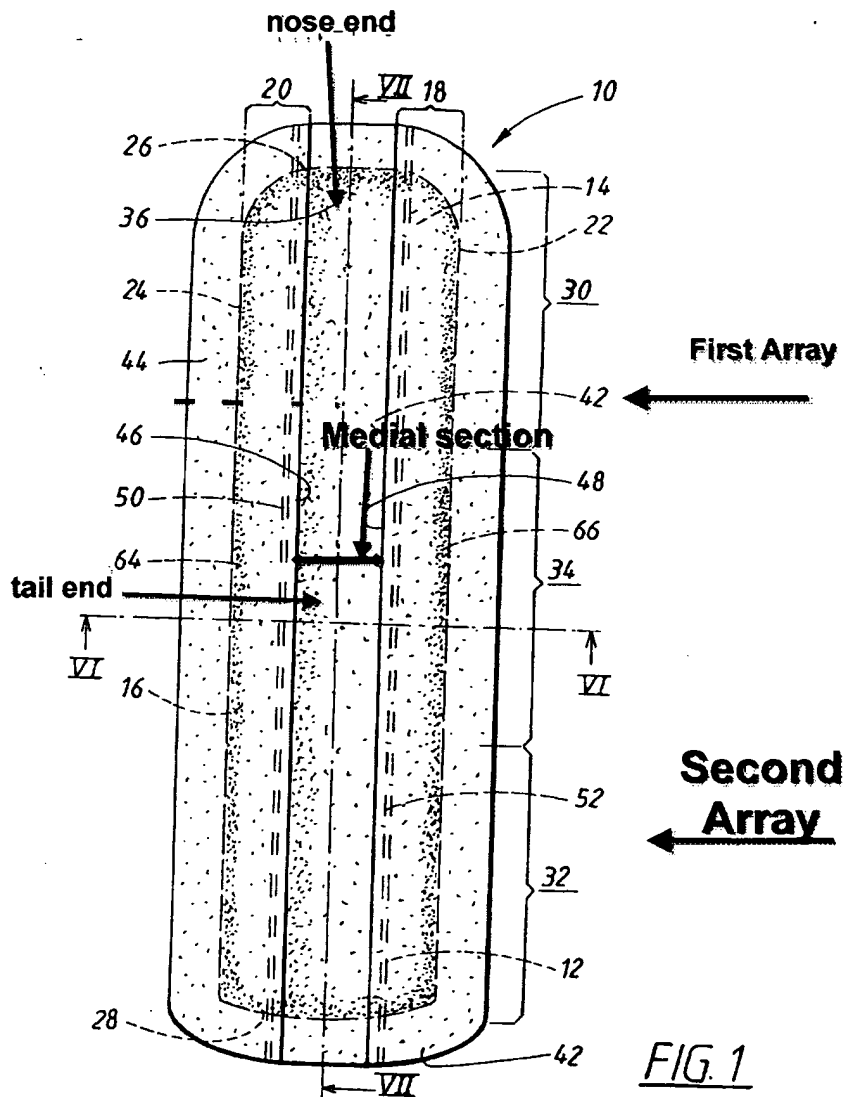


FIG. 1

1. Claims 1, 4, 9-11, 14-15, 17 and 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Drevik (US PG Pubs 2002/0040212).
Regarding claim 1
Drevik discloses beads/stiffening elements 54 on elastic member/deformation-control members 50, 52 that serve as spacing means 60 in a direction

from the center of the napkin to the longitudinal sides of the napkin and contain the claimed array, medial portion and nose/tail-end configurations (figure 1, paragraphs 0029, II. 1-6 and 0032, II. 4-9). Drevik further discloses a first nose-end of the first array of stiffening elements 50,52 positioned to have a lateral component that diverges/moves toward a central region, first tail-end positioned toward a first longitudinal end region, second nose-end of the second array positioned toward a central region, and a second tail-end positioned toward a second longitudinal end region of the article (figure 1), the second end region is located opposite the first end region since the 'end regions' can be defined as any portion of the article (figure 1), and the second array is in a counter-positioned configuration relative to the first array of stiffening elements 50, 52 (figure 1).

Regarding claim 4 Drevik discloses absorbent article comprising absorbent core delimited by upper and lower surfaces, whereby a liquid permeable top sheet extends over upper surface and liquid barrier back sheet covers the lower surface of absorbent core (paragraph 0011, II. 2-10), and furthermore having the deformation-control member 50 providing at least a portion of the absorbent body (figure 7).

Regarding claims 9-11 Drevik discloses beads/stiffening elements that have a longer length dimension than width dimension and stiffening elements which are continuous along their length (axis VII) but some elements can also be discontinuous and located in an intermediate section/pocket 64 (figure 1).

Regarding claims 14-15, Drevik discloses longitudinal edges 22, 24 analogous to first base-side section and first complementary-side section, respectively, which are mirror images of one another (figure 1).

Regarding claim 17 Drevik discloses long cylinders 56 alongside beads 54 in elastic members, which are up to 50 mm long (paragraph 0039, ll. 1-2).

Regarding claims 19-20 Drevik discloses beads/stiffening elements that are substantially linear and substantially curvilinear (figure 1).

Regarding claims 21-23 Drevik discloses garment-facing upper surface/shaping layer 14 and body-side lower surface/supplemental layer 16 (paragraph 0025, ll. 3-6); and said beads/stiffening elements 54 on elastic member/deformation-control members 50, 52 further including channels/embossment elements 62 located on shaping layer 14 (paragraph 0029, ll. 10-14, figure 7).

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hansen et al. (US 6,222,092). Hansen et al. discloses absorbent diaper 9 having a medial section and elastic gather strips/stiffened region 36,38 (col. 7, ll. 7-10); wherein said elastic gather strips/stiffened region 36,38 includes a first array of stiffening elements/slits 50 which form impediments to the flow of urine within the diaper when urine impinges against liner layer 12 and have a first and second array convergently arranged nose-end and a divergently arranged tail end; said first and second arrays avoiding intersecting the medial section; said second array are counter-positioned in relation to the first array (col. 7, ll. 20-27, col. 2, ll. 55-57, figure 1)

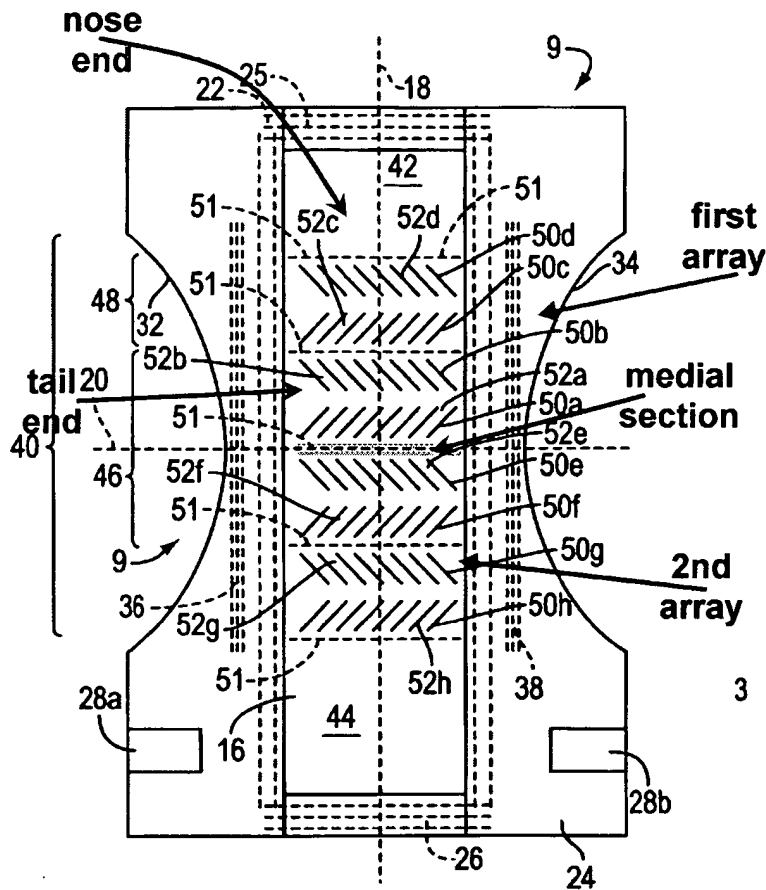


FIG. 1

3. Claims 3, 5-8, 13, 18, and 27 rejected under 35 U.S.C. 103(a) as being unpatentable over Drevik (US PG Pubs 2002/0040212). Regarding claim 3 Drevik discloses a string of beads/stiffening elements discussed above with respect to claim 1. Drevik further discloses a first and second array of channels (depressed regions)/embossing 62 located along longitudinal edge of absorbent core/shaping layer in central portion of absorbent article (paragraph 0011, ll. 13-16).

Regarding claim 5 Drevik discloses the deformation-control member 52 provides at least a garment-facing upper surface/shaping layer 14 of the absorbent body (paragraph 0025, ll. 3-6).

Regarding claim 6 Drevik discloses an absorbent article with an absorbent core 12 sandwiched between back sheet/baffle 42 and liquid permeable top sheet 36 (paragraph 0026, ll. 1-10, figure 7).

Regarding claims 7-8 Drevik does not expressly disclose the medial section length and width. The medial section length and width are result-effective variables since they depend on the size of the absorbent article. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Drevik to have the medial section length and width values claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 18 Drevik discloses a separation between adjacent stiffening elements to be at least 1 mm (paragraph 0044, ll. 1-2).

Regarding claim 27 Drevik discloses the absorbent article as discussed above with respect to claim 1. Drevik does not expressly disclose first or second alignment angle values of the first and second arrays, respectively. The first or second alignment angle values are result-effective variables since they depend on the spacing of the stiffening elements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Drevik to have the first or second alignment angle values, since it has been held that discovering an optimum value of a result

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effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

4. Based on withdrawn rejection of claims pertaining to Rasmussen et al., claims 12, 16 and 24-26 are hereby found unpatentable under 103(a) over Drevik (US PG Pubs 2002/0040212) as applied to claim 1, and further in view of Hansen et al. (US 6,222,092). Regarding claim 12 Drevik discloses an article with a first array of stiffening regions with embossment elements and a second array arranged in a longitudinally opposed position relative to the first array of elements as discussed above with respect to claim 3. Drevik et al. does not expressly disclose a fishbone configuration. Hansen et al. reference discloses an absorbent article with a fishbone array of stiffening elements/slits 50 as discussed above with respect to claim 1. Hansen et al. further discloses the elements in a fishbone array but does not expressly disclose the elements are embossed. One would be motivated to modify the arrays of stiffening elements of Drevik with the fishbone array of Hansen et al. since both references disclose absorbent articles with deformation control members. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the embossed stiffening regions of Drevik, thus providing a fishbone array of stiffening regions.

Regarding claim 13 Drevik discloses the first and second stiffening elements as discussed above with respect to claim 1 but does not expressly disclose a first and second alignment angle. Hansen et al. discloses the parallel slits of the first and second array of barrier elements within each row are disposed at an acute alignment angle of 30-60 degrees to the longitudinal axis (col. 7, ll. 30-34). One would be motivated to

modify the stiffening elements of Drevik with the alignment angles of Hansen et al. since both references disclose absorbent articles with deformation control and stiffening members. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the stiffening elements of Drevik, thus providing an alignment angle.

Regarding claim 16 Drevik discloses the first and second stiffening elements as discussed above with respect to claim 1. Drevik does not expressly disclose a caliper percentage in the range claimed. A caliper percentage is a result-effective variable since it is dependent on the size of the absorbent article and the materials located within the absorbent. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Drevik with the caliper percentage values claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 24-26 Drevik reference discloses the first and second stiffening elements with a perimeter embossment as discussed above with respect to claims 1 and 3.

Response to Arguments

Applicant's arguments filed 11 October 2005 have been fully considered but not found persuasive.

5. In response to Applicant's argument that 'Drevik structures do not provide a first array of stiffening elements having a first, convergently arranged nose-end and a first,

relatively divergently arranged tail-end' or a 'counter positioned configuration which is oppositely aligned' (see Remarks page 8), see the discussion above with respect to claim 1.

6. In response to Applicant's argument that 'Drevik structures also do not provide a differently arranged second array of stiffening elements' (see Remarks page 8), it is noted that the phrase 'differently arranged' as recited in claim 1 is not limited to the alignment of the stiffening elements as discussed above in the Claim Language Interpretation section.

7. In response to Applicant's argument that Drevik does not 'disclose or suggest an arrangement in which the second array of stiffening elements have a counter-positioned configuration which is oppositely aligned relative to the first array of stiffening elements' (see Remarks page 9), each of the arrays is not clearly delineated by a boundary and thus the arrays of stiffening elements could be divided and positioned into any reasonable manner to provide first and second arrays counter positioned relative to one another.

8. It is noted that Applicant has stated that, 'Drevik would be less able to provide desired regions of controlled flexibility and bending, and would be less able to provide desired levels of fit and comfort' (see Remarks page 10).

9. In response to Applicant's argument that 'Hanson does not disclose or suggest a configuration having a deformation control member with a stiffened region which includes a first array of individual stiffening elements' (see Remarks page 11), loops that

comprise barrier elements are stiffening elements since they make the area in which they are located stiffer with the addition of the loop material (see column 8, lines 46-57).

10. In response to Applicant's argument that 'Hanson also fails to teach a configuration wherein the stiffening elements have the recited alignment angles' (see Remarks page 11) see the discussion above with respect to claims 13 and 27.

11. In response to applicant's argument that there is no suggestion to combine the references with respect to claims 3, 5-8, 13, 18 and 27 under 103a over Drevik (see Remarks page 12), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Drevik discloses an absorbent article which improves the direction and regulation of liquid flow with an equivalent stiffening means as discussed above with respect to the aforementioned claims.

12. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (see Remarks page 12), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's

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disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

13. In response to Applicant's arguments that 'the structures taught by Hansen are directed to purposes and functions that are opposite and contradictory to the purposes and functions desired by Drevik' (see Remarks page 13), the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH


TATYANA ZALUKAEVA
SUPERVISORY EXAMINER

